

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRANDON DANTE BARNES,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 2:18-cv-171
)	Judge Stephanie L. Haines
SGT. MILLER, LT. JENKINS, C/O)	
MCGUIRE, C/O DREW, C/O PRICE, C/O)	
VALENCIA, LT. KELLY, CAPT.)	
GUMBAREVIC, TRACY SHAWLEY, SGT.)	
MATTHEWS, C/O GASO, MICHEAL)	
SMITH, M. ZAKEN, MAJOR LEGGETT,)	
RACHEL WILSON, C/O KELLER, LT.)	
BRAUNLICH, LT. MICHNIAK, CAPT.)	
DURCO, LT. LEWIS, C/O EAGLE, DORINA)	
VARNER, ROBERT GILMORE,)	
INDIVIDUALLY AND IN THEIR)	
OFFICIAL CAPACITIES; JOHN DOE 1-6,)	
JANE DOE 1-6,)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter was referred to Chief United States Magistrate Judge Cynthia Reed Eddy for proceedings in accordance with the Federal Magistrates Act, 28 U.S. C. § 636, and Local Civil Rule 72.D.

Plaintiff Brandon Dante Barnes ("Plaintiff") commenced this *pro se* civil rights action on February 7, 2018, by filing a motion for leave to proceed in forma pauperis (ECF No. 1). However, since Plaintiff failed to submit a complete application as required by 28 U.S.C. §§ 1915(a)(1) and (2), his motion to proceed in forma pauperis was dismissed without prejudice (ECF No. 2). Thereafter, on April 16, 2018, Plaintiff filed a proper motion to proceed in forma pauperis (ECF No. 4). The motion was granted (ECF No. 5) and Plaintiff's complaint was filed on April 17, 2018

(ECF No. 6).

Plaintiff initiated this action for alleged violations of his civil rights while incarcerated in Pennsylvania Department of Corrections State Correctional Institution at Green (“SCI Green”). He brought this action against 23 corrections officers, six John Does and six Jane Does (ECF No. 6). He specifically complains of cell searches, his placement in the Restricted Housing Unit (“RHU”), the issuance of a misconduct, and the deprivation of two meals, all of which allegedly occurred at SCI Green between October 2014 and May 2015 (ECF No. 6).

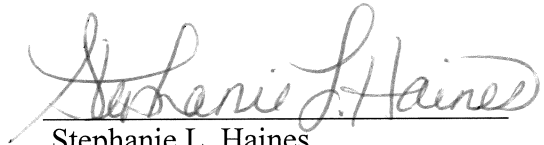
On January 25, 2021, Defendants filed a motion to dismiss for failure to state a claim (ECF No. 45) and a brief in support of the motion to dismiss (ECF No. 46). Plaintiff did not respond to the motion to dismiss. On July 9, 2021, Chief Magistrate Judge Eddy issued a Report and Recommendation (ECF No. 51) recommending that the motion to dismiss (ECF No. 45) be denied without prejudice, that the parties conduct limited discovery to discern whether Plaintiff’s claims are time barred and whether he has failed to exhaust his administrative remedies, and that Defendants be permitted to file a motion for summary judgment on those limited issues. As to Corrections Defendants’ substantive arguments in support of dismissal, in the interests of judicial economy and because a determination of Plaintiff’s claims as time barred or his failure to exhaust administrative remedies is case dispositive, Chief Judge Eddy’s Report and Recommendation (ECF No. 51) also recommends the remainder of Corrections Defendants’ motion to dismiss be held in abeyance and should Plaintiff’s claims not be time barred or deficient for failure to exhaust, the Court should address those arguments in full. The parties were advised that they had fourteen days to file objections to the Report and Recommendation. To date, no objections have been filed and the time to do so has passed.

After review of the Report and Recommendation (ECF No. 51) and the other documents

filed in this case under the applicable “reasoned consideration” standard, *see EEOC V. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of the Magistrate Judge in this matter. Chief Magistrate Judge Eddy correctly determined that Defendants’ motion to dismiss for failure to state a claim should be denied. Accordingly, the following order is entered:

ORDER

AND NOW, this 23rd day of September 2021, IT IS HEREBY ORDERED that Defendants’ motion to dismiss (ECF No. 45) is DENIED WITHOUT PREJUDICE. IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 51) is ADOPTED as the opinion of the Court.


Stephanie L. Haines
United States District Judge